

House Bill 388 (AS PASSED HOUSE AND SENATE)

By: Representatives Mills of the 25th, Everson of the 106th, Keen of the 179th, Harbin of the 118th, Walker of the 107th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, so as to enact the "Option of Adoption Act"; to provide a short title; to define certain terms; to provide that a legal embryo custodian may relinquish rights to an embryo; to provide for procedures; to provide that a child born as a result of such relinquished embryo shall be the legal child of the recipient; to provide for an expedited order of parentage; to amend the Official Code of Georgia Annotated so as to conform provisions and correct cross-references; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Option of Adoption Act."

SECTION 2.

Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, is amended by designating the existing chapter as Article 1 and adding a new article to read as follows:

"ARTICLE 2

19-8-40.

As used in this article, the term:

(1) 'Embryo' or 'human embryo' means an individual fertilized ovum of the human species from the single-cell stage to eight-week development.

(2) 'Embryo relinquishment' or 'legal transfer of rights to an embryo' means the relinquishment of rights and responsibilities by the person or persons who hold the legal

rights and responsibilities for an embryo and the acceptance of such rights and responsibilities by a recipient intended parent.

(3) 'Embryo transfer' means the medical procedure of physically placing an embryo into the uterus of a female.

(4) 'Legal embryo custodian' means the person or persons who hold the legal rights and responsibilities for a human embryo and who relinquishes said embryo to another person or persons.

(5) 'Recipient intended parent' means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

19-8-41.

(a) A legal embryo custodian may relinquish all rights and responsibilities for an embryo to a recipient intended parent prior to embryo transfer. A written contract shall be entered into between each legal embryo custodian and each recipient intended parent prior to embryo transfer for the legal transfer of rights to an embryo and to any child that may result from the embryo transfer. The contract shall be signed by each legal embryo custodian for such embryo and by each recipient intended parent in the presence of a notary public and a witness. Initials or other designations may be used if the parties desire anonymity. The contract may include a written waiver by the legal embryo custodian of notice and service in any legal adoption or other parentage proceeding which may follow.

(b) If the embryo was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment be required.

(c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection (a) of this Code section, the legal transfer of rights to an embryo shall be considered complete, and the embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) of this Code section shall be presumed to be the legal child of the recipient intended parent; provided that each legal embryo custodian and each recipient intended parent has entered into a written contract.

19-8-42.

(a) Prior to the birth of a child or following the birth of a child, a recipient intended parent may petition the superior court for an expedited order of adoption or parentage. In such

cases, the written contract between each legal embryo custodian and each recipient intended parent shall be acceptable in lieu of a surrender of rights.

(b) All petitions under this article shall be filed in the county in which any petitioner or any respondent resides.

(c) The court shall give effect to any written waiver of notice and service in the legal proceeding for adoption or parentage.

(d) In the interest of justice, to promote the stability of embryo transfers, and to promote the interests of children who may be born following such embryo transfers, the court in its discretion may waive such technical requirements as the court deems just and proper.

19-8-43.

Upon a filing of a petition for adoption or parentage and the court finding that such petition meets the criteria required by this article, an expedited order of adoption or parentage shall be issued and shall be a final order. Such order shall terminate any future parental rights and responsibilities of any past or present legal embryo custodian or gamete donor in a child which results from the embryo transfer and shall vest such rights and responsibilities in the recipient intended parent."

SECTION 3.

Code Section 15-11-28 of the Official Code of Georgia Annotated, relating to jurisdiction of the juvenile court, is amended by revising subparagraph (a)(2)(C) as follows:

"(C) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child, other than that in connection with adoption proceedings under Article 1 of Chapter 8 of Title 19, in which the superior courts shall have concurrent jurisdiction to terminate the legal parent-child relationship and the rights of the biological father who is not the legal father of the child;"

SECTION 4.

Code Section 19-8-26 of the Official Code of Georgia Annotated, relating to how surrender of parental rights is executed, is amended by revising subsection (c) as follows:

"(c) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-5 shall conform substantially to the following form:

SURRENDER OF RIGHTS
FINAL RELEASE FOR ADOPTION
NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name, surname not required, of each person to whom surrender is made), PROVIDED each such person is named as petitioner in a petition for adoption of the child filed in accordance with Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated within 60 days from the date hereof. Furthermore, I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name, surname not required, of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

It is also my wish, intent, and purpose that if each such person is not named as petitioner in a petition for adoption as provided for above within the 60 day period, other than for excusable neglect, or, if said petition for adoption is filed within 60 days but the adoption action is dismissed with prejudice or otherwise concluded without an order declaring the child to be the adopted child of each such person, then I do hereby surrender the child as follows:

(Mark one of the following as chosen)

_____ I wish the child returned to me, and I expressly acknowledge that this provision applies only to the limited circumstance that the child is not adopted by the person or persons designated herein and further that this provision does not impair the validity, absolute finality, or totality of this surrender under any circumstance other than the failure of the designated person or persons to adopt the child and that no other provision of this surrender impairs the validity, absolute finality, or totality of this surrender once the revocation period has elapsed; or

_____ I surrender the child to (insert name of designated licensed child-placing agency), a licensed child-placing agency, for placement for adoption; or

_____ I surrender the child to the Department of Human Resources, as provided by subsection (k) of Code Section 19-8-5, for placement for adoption; and (insert name of

designated licensed child-placing agency) or the Department of Human Resources may petition the superior court for custody of the child in accordance with the terms of this surrender.

Furthermore, I hereby agree that the child is to be adopted either by each person named above or by any other such person as may be chosen by the (insert name of designated licensed child-placing agency) or the Department of Human Resources and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with such agent in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of agent of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, ____.

_____(SEAL)
(Parent or guardian)

Unofficial witness

Sworn to and subscribed

before me this _____

day of _____, ____.

Notary public (SEAL)

My commission expires _____."

SECTION 5.

Code Section 29-2-22 of the Official Code of Georgia Annotated, relating to authority of a guardian, is amended by revising paragraph (4) of subsection (a) as follows:

"(4) Execute a surrender of rights to enable the adoption of the minor pursuant to the provisions of Article 1 of Chapter 8 of Title 19 or the adoption laws of any other state; and"

SECTION 6.

Code Section 49-5-12 of the Official Code of Georgia Annotated, relating to licensing and inspection of child welfare agencies, is amended by revising paragraphs (1) and (2) of subsection (q) as follows:

"(1) Adopt a child or children from receiving or accepting a child or children in the individual's home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or

(2) Have that individual's child or children placed for adoption from placing that individual's child or children in the home of an individual who is not related to the child or children in anticipation of the individual's initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19."

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.